

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

SHERRY HAMMITT,

Plaintiff,

v.

CIVIL ACTION NO. 5:21-cv-00204

MERRICK GARLAND,
Attorney General,

Respondent.

ORDER

Pending is Defendant's Motion to Dismiss [Doc. 14], filed July 30, 2021. In lieu of responding, Plaintiff requested additional time to obtain counsel. [Doc. 17]. Plaintiff was given until September 17, 2021, to advise the Court of any legal representation or to file her response to Defendant's motion. [Doc. 18]. Plaintiff did not respond. This action was previously referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission of proposed findings and a recommendation ("PF&R"). Magistrate Judge Aboulhosn filed his PF&R on October 13, 2021. Magistrate Judge Aboulhosn recommended that the Court dismiss the action from the Court's docket for failure to prosecute and deny Defendant's motion to dismiss as moot. [Doc. 20].

The Court need not review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140 (1985); *see also* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations *to which objection is made.*") (emphasis


added). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner's right to appeal the Court's order. *See* 28 U.S.C. § 636(b)(1); *see also United States v. De Leon-Ramirez*, 925 F.3d 177, 181 (4th Cir. 2019) (parties may not typically "appeal a magistrate judge's findings that were not objected to below, as § 636(b) doesn't require de novo review absent objection."); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989). Further, the Court need not conduct de novo review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections in this case were due on November 1, 2021. No objections were filed.

Accordingly, the Court **ADOPTS** the PF&R [**Doc. 20**] and **DISMISSES** the matter for failure to prosecute under Rule 41(b) of the *Federal Rules of Civil Procedure*. The Court **DENIES** Defendant's motion to dismiss [**Doc. 14**] as moot.

The Court directs the Clerk to transmit a copy of this Order to any counsel of record and any unrepresented party.

ENTER: November 8, 2021




Frank W. Volk
United States District Judge